

**Introduced by Senator Huff**

February 4, 2010

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An act to amend ~~Section 17210 of Sections 44929.21, 44936, 44944, 44945, 44955, and 44956 of~~ to add Section 44955.1 to, and to repeal Section 44949 of, the Education Code, relating to school facilities districts, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 955, as amended, Huff. School facilities: schoolsites districts.

(1) Existing law provides that, after a certificated employee of a school district with an average daily attendance of 250 or more completes 2 consecutive years and is reelected for the next succeeding school year to a position requiring certification, the employee becomes and is classified as a permanent employee of the school district. Existing law additionally requires the governing board of a school district to notify the employee on or before March 15 of the employee's 2nd year of probation of the governing board's decision whether to reelect or not reelect the employee for the next succeeding school year to the position.

This bill would change the notification deadline from March 15 to June 15 of the employee's 2nd year of probation.

(2) Existing law establishes certain procedures with which the governing board of a school district is required to comply before dismissing or suspending a permanent employee, including, at the employee's option, a hearing. Existing law establishes a commission of professional competence for each hearing, consisting of specified

*members. Existing law deems the decision of the commission on professional competence to be the final decision of the governing board.*

*Existing law prohibits a notice of dismissal or suspension initiated pursuant to these provisions from being given between May 15 and September 15, inclusive, in any year.*

*This bill would delete that prohibition. The bill would make various changes to the provisions relating to the hearing, including authorizing the commission of professional competence to consist solely of an administrative law judge, as well as providing that the decision of the commission would be advisory, and the final decision regarding the discipline of the employee would be determined by action of the governing board. The bill would provide that an employee requesting a hearing would be deemed terminated but would be entitled to reasonable back wages and benefits.*

*Existing law authorizes the decision of a commission on professional competence to be reviewed by a court of competent jurisdiction on petition of either the governing board or the employee.*

*This bill would instead authorize the decision to be reviewed on petition of the employee.*

*(3) Existing law requires, when a reduction in the number of certificated employees employed by a school district is authorized for specified reasons, the notice of the termination of the services of an employee in the subsequent school year be given by the governing board to the employee, in a prescribed manner, before May 15. Existing law requires the superintendent of the district, prior to March 15 and before an employee is given the described notice, to give written notice to the governing board and the employee that it has been recommended that the notice be given to the employee, and stating the reasons therefor. Existing law authorizes an employee who is given this notice to request a hearing to determine if there is cause for not reemploying him or her for the ensuing year.*

*This bill would eliminate this notice requirement and the authority of an employee to request a hearing.*

*Existing law provides that when employees are terminated pursuant to a reduction in workforce, that a school district is required to terminate the employees in order of seniority. Existing law provides certain exceptions to this rule.*

*This bill would provide additional exceptions, including authorizing school districts to terminate employees on the basis of performance evaluations, as specified, and on the basis that the employee is assigned*

to a schoolsite that has been selected by the governing board from certificated reductions in force, based upon the needs of the educational program.

(4) Existing law generally requires school districts to adhere to certain requirements with respect to teacher and administrator employment. Existing law requires a charter school petition to set forth specified information in its charter relating to employment, including the qualifications to be met by individuals to be employed at the school.

This bill would authorize school districts, county offices of education, and charter schools to assign, reassign, and transfer teachers and administrators based on effectiveness and subject matter needs, and without regard to years of service.

(5) Existing law provides certain rights for permanent school employees who have been terminated pursuant to specified provisions of law, including the right to be offered prior opportunity for substitute service during the absence of any other employee who has been granted a leave of absence or who is temporarily absent from duty, as specified.

This bill, notwithstanding these provisions, would authorize a school district to deviate from reappointing a certificated employee in order of seniority for specified reasons.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law sets forth various definitions for purposes of certain provisions of existing law dealing with the acquisition of schoolsites.~~

~~This bill would make technical, nonsubstantive changes to those definition provisions.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 44929.21 of the Education Code is
- 2     amended to read:
- 3     44929.21. (a) Every employee of a school district of any type
- 4     or class having an average daily attendance of 250 or more who,
- 5     after having been employed by the district for three complete
- 6     consecutive school years in a position or positions requiring
- 7     certification qualifications, is reelected for the next succeeding
- 8     school year to a position requiring certification qualifications shall,

1 at the commencement of the succeeding school year be classified  
2 as and become a permanent employee of the district.

3 This subdivision shall apply only to probationary employees  
4 whose probationary period commenced prior to the 1983–84 fiscal  
5 year.

6 (b) Every employee of a school district of any type or class  
7 having an average daily attendance of 250 or more who, after  
8 having been employed by the district for two complete consecutive  
9 school years in a position or positions requiring certification  
10 qualifications, is reelected for the next succeeding school year to  
11 a position requiring certification qualifications shall, at the  
12 commencement of the succeeding school year be classified as and  
13 become a permanent employee of the district.

14 The governing board shall notify the employee, on or before  
15 ~~March 15~~ June 15 of the employee's second complete consecutive  
16 school year of employment by the district in a position or positions  
17 requiring certification qualifications, of the decision to reelect or  
18 not reelect the employee for the next succeeding school year to  
19 the position. In the event that the governing board does not give  
20 notice pursuant to this section on or before ~~March 15~~ June 15, the  
21 employee shall be deemed reelected for the next succeeding school  
22 year.

23 This subdivision shall apply only to probationary employees  
24 whose probationary period commenced during the 1983–84 fiscal  
25 year or any fiscal year thereafter.

26 *SEC. 2. Section 44936 of the Education Code is amended to*  
27 *read:*

28 44936. The notice of dismissal or suspension in a proceeding  
29 initiated pursuant to Section 44934 ~~shall not be given between~~  
30 ~~May 15th and September 15th in any year.~~ It shall be in writing  
31 and be served upon the employee personally or by United States  
32 registered mail addressed to him at his last known address. A copy  
33 of the charges filed, containing the information required by Section  
34 11503 of the Government Code, together with a copy of the  
35 provisions of this article, shall be attached to the notice.

36 *SEC. 3. Section 44944 of the Education Code is amended to*  
37 *read:*

38 44944. (a) (1) In a dismissal or suspension proceeding initiated  
39 pursuant to Section 44934, if a hearing is requested by the  
40 employee, the hearing shall be commenced within 60 days from

1 the date of the employee's demand for a hearing. The hearing shall  
2 be initiated, conducted, and a decision made in accordance with  
3 Chapter 5 (commencing with Section 11500) of Part 1 of Division  
4 3 of Title 2 of the Government Code. However, the hearing date  
5 shall be established after consultation with the employee and the  
6 governing board, or their representatives, and the Commission on  
7 Professional Competence shall have all of the power granted to  
8 an agency in that chapter, except that the right of discovery of the  
9 parties shall not be limited to those matters set forth in Section  
10 11507.6 of the Government Code but shall include the rights and  
11 duties of any party in a civil action brought in a superior court  
12 under Title 4 (commencing with Section 2016.010) of Part 4 of  
13 the Code of Civil Procedure. Notwithstanding any provision to the  
14 contrary, and except for the taking of oral depositions, no discovery  
15 shall occur later than 30 calendar days after the employee is served  
16 with a copy of the accusation pursuant to Section 11505 of the  
17 Government Code. In all cases, discovery shall be completed prior  
18 to seven calendar days before the date upon which the hearing  
19 commences. If ~~any~~ a continuance is granted pursuant to Section  
20 11524 of the Government Code, the time limitation for  
21 commencement of the hearing as provided in this subdivision shall  
22 be extended for a period of time equal to the continuance. However,  
23 the extension shall not include that period of time attributable to  
24 an unlawful refusal by either party to allow the discovery provided  
25 for in this section.

26 (2) If the right of discovery granted under paragraph (1) is  
27 denied by either the employee or the governing board, all of the  
28 remedies in Chapter 7 (commencing with Section 2023.010) of  
29 Title 4 of Part 4 of the Code of Civil Procedure shall be available  
30 to the party seeking discovery, and the court of proper jurisdiction;  
31 to entertain his or her motion; shall be the superior court of the  
32 county in which the hearing will be held.

33 (3) The time periods in this section and of Chapter 5  
34 (commencing with Section 11500) of Part 1 of Division 3 of Title  
35 2 of the Government Code and of Title 4 (commencing with  
36 Section 2016.010) of Part 4 of the Code of Civil Procedure shall  
37 not be applied so as to deny discovery in a hearing conducted  
38 pursuant to this section.

39 (4) The superior court of the county in which the hearing will  
40 be held may, upon motion of the party seeking discovery, suspend

1 the hearing so as to comply with the requirement of the preceding  
2 paragraph.

3 (5) No witness shall be permitted to testify at the hearing except  
4 upon oath or affirmation. ~~No testimony shall be given or evidence~~  
5 ~~introduced relating to matters that occurred more than four years~~  
6 ~~prior to the date of the filing of the notice. Evidence of records~~  
7 ~~regularly kept by the governing board concerning the employee~~  
8 ~~may be introduced, but no decision relating to the dismissal or~~  
9 ~~suspension of any employee shall be made based on charges or~~  
10 ~~evidence of any nature relating to matters occurring more than~~  
11 ~~four years prior to the filing of the notice.~~

12 (b) ~~(4)~~ The hearing provided for in this section shall be  
13 conducted by a Commission on Professional Competence. ~~One~~  
14 *The commission shall be established through one of the following*  
15 *two methods, as selected by the governing board:*

16 (1) One member of the commission shall be selected by the  
17 employee, one member shall be selected by the governing board,  
18 and one member shall be an administrative law judge of the Office  
19 of Administrative Hearings who shall be chairperson and a voting  
20 member of the commission and shall be responsible for ~~assuring~~  
21 *ensuring* that the legal rights of the parties are protected at the  
22 hearing. *The member selected by the governing board and the*  
23 *member selected by the employee shall not be related to the*  
24 *employee, shall not be employees of the district initiating the*  
25 *dismissal or suspension, and shall hold a currently valid credential*  
26 *and have at least five years' teaching or administrative experience.*  
27 If either the governing board or the employee for any reason fails  
28 to select a commission member at least seven calendar days prior  
29 to the date of the hearing, the failure shall constitute a waiver of  
30 the right to selection, and the county board of education or its  
31 specific designee shall immediately make the selection. If the  
32 county board of education is also the governing board of the school  
33 district or has by statute been granted the powers of a governing  
34 board, the selection shall be made by the Superintendent, who shall  
35 be reimbursed by the school district for all costs incident to the  
36 selection.

37 ~~(2) The member selected by the governing board and the~~  
38 ~~member selected by the employee shall not be related to the~~  
39 ~~employee and shall not be employees of the district initiating the~~  
40 ~~dismissal or suspension and shall hold a currently valid credential~~

1 ~~and have at least five years' experience within the past 10 years~~  
2 ~~in the discipline of the employee.~~

3 (2) *The commission shall consist solely of an administrative*  
4 *law judge of the Office of Administrative Hearings who shall be*  
5 *responsible for ensuring that the legal rights of the parties are*  
6 *protected at the hearing.*

7 (c) (1) ~~The decision of the Commission on Professional~~  
8 ~~Competence commission shall be made by a majority vote, and~~  
9 ~~the commission shall~~ prepare a written decision containing findings  
10 of fact, determinations of issues, and a disposition that shall be,  
11 solely, one of the following:

12 (A) That the employee should be dismissed.

13 (B) That the employee should be suspended for a specific period  
14 of time without pay.

15 (C) That the employee should not be dismissed or suspended.

16 (2) ~~The decision of the Commission on Professional Competence~~  
17 *commission* that the employee should not be dismissed or  
18 suspended shall not be based on nonsubstantive procedural errors  
19 committed by the school district or governing board unless the  
20 errors are prejudicial errors.

21 (3) The commission shall not have the power to dispose of the  
22 charge of dismissal by imposing probation or other alternative  
23 sanctions. The imposition of suspension pursuant to subparagraph  
24 (B) of paragraph (1) shall be available only in a suspension  
25 proceeding authorized pursuant to subdivision (b) of Section 44932  
26 or Section 44933.

27 (4) ~~The decision of the Commission on Professional Competence~~  
28 *commission shall be deemed to be the final decision of the*  
29 ~~governing board~~ *advisory, and the final decision regarding the*  
30 *discipline of the employee shall be determined by action of the*  
31 *governing board of the school district.*

32 (5) The board may adopt from time to time rules and procedures  
33 not inconsistent with this section as may be necessary to effectuate  
34 this section.

35 (6) The governing board and the employee shall have the right  
36 to be represented by counsel.

37 (d) (1) *If the commission has been established pursuant to*  
38 *paragraph (1) of subdivision (b), and the member selected by the*  
39 *governing board or the member selected by the employee is*  
40 *employed by any school district in this state, the member shall,*

1 during any service on a ~~Commission on Professional Competence~~  
2 *the commission*, continue to receive salary, fringe benefits,  
3 accumulated sick leave, and other leaves and benefits from the  
4 district in which the member is employed, but shall receive no  
5 additional compensation or honorariums for service on the  
6 commission.

7 (2) If *the commission has been established pursuant to*  
8 *paragraph (1) of subdivision (b), and service on a Commission*  
9 ~~on Professional Competence~~ *the commission* occurs during summer  
10 recess or vacation periods, the member shall receive compensation  
11 proportionate to that received during the current or immediately  
12 preceding contract period from the member's employing district,  
13 whichever amount is greater.

14 (e) (1) If the ~~Commission on Professional Competence~~  
15 *governing board* determines that the employee should be dismissed  
16 or suspended, the governing board and the employee shall share  
17 equally the expenses of the hearing, including the cost of the  
18 administrative law judge. ~~The~~ *If the commission has been*  
19 *established pursuant to paragraph (1) of subdivision (b), the state*  
20 shall pay any costs incurred under paragraph (2) of subdivision  
21 (d), the reasonable expenses, as determined by the administrative  
22 law judge, of the member selected by the governing board and the  
23 member selected by the employee, including, but not limited to,  
24 payments or obligations incurred for travel, meals, and lodging,  
25 and the cost of the substitute or substitutes, if any, for the member  
26 selected by the governing board and the member selected by the  
27 employee. The Controller shall pay all claims submitted pursuant  
28 to this paragraph from the General Fund, and may prescribe  
29 reasonable rules, regulations, and forms for the submission of the  
30 claims. The employee and the governing board shall pay their own  
31 attorney's fees.

32 (2) If the ~~Commission on Professional Competence~~ *governing*  
33 *board* determines that the employee should not be dismissed or  
34 suspended, the governing board shall pay the expenses of the  
35 hearing, including the cost of the administrative law judge, any  
36 costs incurred under paragraph (2) of subdivision (d), the  
37 reasonable expenses, as determined by the administrative law  
38 judge, of the member selected by the governing board and the  
39 member selected by the employee, including, but not limited to,  
40 payments or obligations incurred for travel, meals, and lodging,

1 the cost of the substitute or substitutes, if any, for the member  
2 selected by the governing board and the member selected by the  
3 employee, and reasonable attorney's fees incurred by the employee.

4 (3) As used in this section, "reasonable expenses" shall not be  
5 deemed "compensation" within the meaning of subdivision (d).

6 (4) If either the governing board or the employee petitions a  
7 court of competent jurisdiction for review of the decision of the  
8 commission, the payment of expenses to ~~members of the~~  
9 ~~commission~~ the administrative law judge required by this  
10 subdivision shall not be stayed.

11 (5) (A) If *the commission has been established pursuant to*  
12 *paragraph (1) of subdivision (b), and* the decision of the  
13 ~~commission~~ governing board is finally reversed or vacated by a  
14 court of competent jurisdiction, either the state, having paid the  
15 commission members' expenses, shall be entitled to reimbursement  
16 from the governing board for those expenses, or the governing  
17 board, having paid the expenses, shall be entitled to reimbursement  
18 from the state.

19 (B) ~~Additionally, either~~ *Either* the employee, having paid a  
20 portion of the expenses of the hearing, including the cost of the  
21 administrative law judge, shall be entitled to reimbursement from  
22 the governing board for the expenses, or the governing board,  
23 having paid its portion and the employee's portion of the expenses  
24 of the hearing, including the cost of the administrative law judge,  
25 shall be entitled to reimbursement from the employee for that  
26 portion of the expenses.

27 (f) The hearing provided for in this section shall be conducted  
28 in a place selected by agreement among the members of the  
29 commission. ~~In~~ *If the commission has been established pursuant*  
30 *to paragraph (1) of subdivision (b), in the absence of agreement,*  
31 the place shall be selected by the administrative law judge.

32 (g) *An employee requesting a hearing pursuant to this section*  
33 *shall be deemed terminated by the initiating district as of the time*  
34 *the governing board votes to approve an agenda item to dismiss*  
35 *the employee. However, if the employee prevails at the hearing,*  
36 *the administrative law judge may recommend a suitable*  
37 *compensatory remedy, including back wages and benefits, which*  
38 *the governing board may adopt if the employee is reinstated. Any*  
39 *employee who is reinstated pursuant to this section, either by the*

governing board or by order of a court of competent jurisdiction,  
is entitled to reasonable back wages and benefits.

SEC. 4. Section 44945 of the Education Code is amended to read:

44945. The decision of the ~~Commission on Professional Competence governing board~~ may, on petition of ~~either the governing board or~~ the employee, be reviewed by a court of competent jurisdiction in the same manner as a decision made by a hearing officer under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The court, on review, shall exercise its independent judgment on the evidence. The proceeding shall be set for hearing at the earliest possible date and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence is given by law.

SEC. 5. Section 44949 of the Education Code is repealed.

44949. (a) ~~No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.~~

~~Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.~~

~~(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before~~

1 the date specified, his or her failure to do so shall constitute his or  
2 her waiver of his or her right to a hearing. The notice provided for  
3 in subdivision (a) shall advise the employee of the provisions of  
4 this subdivision.

5 (e) In the event a hearing is requested by the employee, the  
6 proceeding shall be conducted and a decision made in accordance  
7 with Chapter 5 (commencing with Section 11500) of Part 1 of  
8 Division 3 of Title 2 of the Government Code and the governing  
9 board shall have all the power granted to an agency therein, except  
10 that all of the following shall apply:

11 (1) The respondent shall file his or her notice of defense, if any,  
12 within five days after service upon him or her of the accusation  
13 and he or she shall be notified of this five-day period for filing in  
14 the accusation.

15 (2) The discovery authorized by Section 11507.6 of the  
16 Government Code shall be available only if request is made  
17 therefor within 15 days after service of the accusation, and the  
18 notice required by Section 11505 of the Government Code shall  
19 so indicate.

20 (3) The hearing shall be conducted by an administrative law  
21 judge who shall prepare a proposed decision, containing findings  
22 of fact and a determination as to whether the charges sustained by  
23 the evidence are related to the welfare of the schools and the pupils  
24 thereof. The proposed decision shall be prepared for the governing  
25 board and shall contain a determination as to the sufficiency of  
26 the cause and a recommendation as to disposition. However, the  
27 governing board shall make the final determination as to the  
28 sufficiency of the cause and disposition. None of the findings,  
29 recommendations, or determinations contained in the proposed  
30 decision prepared by the administrative law judge shall be binding  
31 on the governing board. Nonsubstantive procedural errors  
32 committed by the school district or governing board of the school  
33 district shall not constitute cause for dismissing the charges unless  
34 the errors are prejudicial errors. Copies of the proposed decision  
35 shall be submitted to the governing board and to the employee on  
36 or before May 7 of the year in which the proceeding is commenced.  
37 All expenses of the hearing, including the cost of the administrative  
38 law judge, shall be paid by the governing board from the district  
39 funds.

1 The board may adopt from time to time such rules and procedures  
2 not inconsistent with provisions of this section as may be necessary  
3 to effectuate this section.

4 (d) ~~Any notice or request shall be deemed sufficient when it is~~  
5 ~~delivered in person to the employee to whom it is directed, or when~~  
6 ~~it is deposited in the United States registered mail, postage prepaid~~  
7 ~~and addressed to the last known address of the employee.~~

8 (e) ~~If after request for hearing pursuant to subdivision (b) any~~  
9 ~~continuance is granted pursuant to Section 11524 of the~~  
10 ~~Government Code, the dates prescribed in subdivision (c) which~~  
11 ~~occur on or after the date of granting the continuance and the date~~  
12 ~~prescribed in subdivision (c) of Section 44955 which occurs after~~  
13 ~~the date of granting the continuance shall be extended for a period~~  
14 ~~of time equal to the continuance.~~

15 *SEC. 6. Section 44955 of the Education Code is amended to*  
16 *read:*

17 44955. (a) No permanent employee shall be deprived of his  
18 or her position for causes other than those specified in Sections  
19 44907 and 44923, and Sections 44932 to 44947, inclusive, and no  
20 probationary employee shall be deprived of his or her position for  
21 cause other than as specified in ~~Sections~~ *Section 44948 to 44949,*  
22 *inclusive.*

23 (b) *(1)* Whenever in any school year the average daily  
24 attendance in all of the schools of a district for the first six months  
25 in which school is in session ~~shall have~~ *has* declined below the  
26 corresponding period of either of the previous two school years,  
27 whenever the governing board determines that attendance in a  
28 district will decline in the following year as a result of the  
29 termination of an interdistrict tuition agreement as defined in  
30 Section 46304, whenever a particular kind of service is to be  
31 reduced or discontinued not later than the beginning of the  
32 following school year, or whenever the amendment of state law  
33 requires the modification of curriculum, and when in the opinion  
34 of the governing board of the district it ~~shall have~~ *has* become  
35 necessary by reason of any of these conditions to decrease the  
36 number of permanent employees in the district, the governing  
37 board may terminate the services of not more than a corresponding  
38 percentage of the certificated employees of the district, permanent  
39 as well as probationary, at the close of the school year. Except as  
40 otherwise provided by statute, the services of ~~no~~ *a* permanent

1 employee ~~may~~ *shall not* be terminated under the provisions of this  
2 section while any probationary employee, or any other employee  
3 with less seniority, is retained to render a service which ~~said the~~  
4 permanent employee is certificated and competent to render.

5 ~~In~~

6 (2) *In* computing a decline in average daily attendance for  
7 purposes of this section for a newly formed or reorganized school  
8 district, each school of the district shall be deemed to have been  
9 a school of the newly formed or reorganized district for both of  
10 the two previous school years.

11 ~~As~~

12 (3) *As* between employees who first rendered paid service to  
13 the district on the same date, the governing board shall determine  
14 the order of termination solely on the basis of needs of the district  
15 and the ~~students pupils~~ thereof, *including distinctions based upon*  
16 *performance evaluations*. Upon the request of any employee whose  
17 order of termination is so determined, the governing board shall  
18 furnish in writing ~~no later than five days prior to the~~  
19 ~~commencement of the hearing held in accordance with Section~~  
20 ~~44949~~ *within 30 days of the request*, a statement of the specific  
21 criteria used in determining the order of termination and the  
22 application of the criteria in ranking each employee relative to the  
23 other employees in the group. This requirement that the governing  
24 board provide, on request, a written statement of reasons for  
25 determining the order of termination shall not be interpreted to  
26 give affected employees any legal right or interest that would not  
27 exist without such a requirement.

28 (c) Notice of ~~such~~ termination of services shall be given before  
29 the 15th of May ~~in the manner prescribed in Section 44949~~, and  
30 services of ~~such those~~ employees shall be terminated in the inverse  
31 of the order in which they were employed, as determined by the  
32 board in accordance with the provisions of Sections 44844 and  
33 44845. ~~In the event that a permanent or probationary employee is~~  
34 ~~not given the notices and a right to a hearing as provided for in~~  
35 ~~Section 44949, he or she shall be deemed reemployed for the~~  
36 ~~ensuing school year.~~

37 ~~The governing board shall make assignments and reassignments~~  
38 ~~in such a manner that employees shall be retained to render any~~  
39 ~~service which their seniority and qualifications entitle them to~~  
40 ~~render. However, prior to assigning or reassigning any certificated~~

1 employee to teach a subject which he or she has not previously  
2 taught, and for which he or she does not have a teaching credential  
3 or which is not within the employee's major area of postsecondary  
4 study or the equivalent thereof, the governing board shall require  
5 the employee to pass a subject matter competency test in the  
6 appropriate subject.

7 (d) Notwithstanding subdivision (b), a school district may  
8 deviate from terminating a certificated employee in order of  
9 seniority for either any of the following reasons:

10 (1) The district demonstrates a specific need for personnel to  
11 teach a specific course or course of study, or to provide services  
12 authorized by a services credential with a specialization in either  
13 pupil personnel services or health for a school nurse, and that the  
14 certificated employee has special training and experience necessary  
15 to teach that course or course of study or to provide those services,  
16 which others with more seniority do not possess.

17 (2) For purposes of maintaining or achieving compliance with  
18 constitutional requirements related to equal protection of the laws.

19 (3) *On the basis of performance evaluations, if pursuant to a*  
20 *process whereby employees with superior evaluations are retained*  
21 *over those with inferior evaluations. The governing board may*  
22 *exercise its discretion in developing such a process, which shall*  
23 *be applied uniformly to the entire class that is subject to the*  
24 *reduction in force.*

25 (4) *On the basis that the employee is assigned to a schoolsite*  
26 *that has been selected by the governing board for exemption from*  
27 *certificated reductions in force, based upon the needs of the*  
28 *educational program.*

29 SEC. 7. Section 44955.1 is added to the Education Code, to  
30 read:

31 44955.1. *Notwithstanding any other law, a school district,*  
32 *county office of education, or charter school may assign, reassign,*  
33 *and transfer teachers and administrators based on effectiveness*  
34 *and subject matter needs without regard to years of service.*

35 SEC. 8. Section 44956 of the Education Code is amended to  
36 read:

37 44956. (a) ~~Any~~ A permanent employee whose services have  
38 been terminated as provided in Section 44955 shall have the  
39 following rights:

40 (1)

1 (a) For the period of 39 months from the date of ~~such the~~  
2 termination, ~~any~~ an employee who in the meantime has not attained  
3 the age of 65 years shall have the preferred right to reappointment,  
4 in the order of original employment as determined by the board  
5 in accordance with the provisions of Sections 44831 to 44855,  
6 inclusive, if the number of employees is increased or the  
7 discontinued service is reestablished, with no requirements that  
8 were not imposed upon other employees who continued in service;  
9 provided, that ~~no~~ a probationary or other employee with less  
10 seniority shall *not* be employed to render a service which said  
11 employee is certificated and competent to render. However, ~~prior~~  
12 ~~to before~~ reappointing ~~any~~ an employee to teach a subject which  
13 he or she has not previously taught, and for which he or she does  
14 not have a teaching credential or which is not within the  
15 employee's major area of postsecondary study or the equivalent  
16 thereof, the governing board shall require the employee to pass a  
17 subject matter competency test in the appropriate subject.

18 ~~(2) The aforesaid~~

19 (b) *This* right to reappointment may be waived by the employee,  
20 without prejudice, for not more than one school year, unless the  
21 board extends this right, but ~~such the~~ waiver shall not deprive the  
22 employee of his *or her* right to subsequent offers of reappointment.

23 ~~(3)~~

24 (c) Notwithstanding ~~paragraph (1)~~ *subdivision (a)*, a school  
25 district may deviate from *the order of seniority in* reappointing a  
26 certificated employee ~~in order of seniority~~ for either of the  
27 following reasons:

28 ~~(A)~~

29 (1) The district demonstrates a specific need for personnel to  
30 teach a specific course or course of study, or to provide services  
31 authorized by a services credential with a specialization in either  
32 pupil personnel services or health for a school nurse, and that the  
33 employee has special training and experience necessary to teach  
34 that course or course of study, or to provide those services, which  
35 others with more seniority do not possess.

36 ~~(B)~~

37 (2) For purposes of maintaining or achieving compliance with  
38 constitutional requirements related to equal protection of the laws.

39 ~~(4) As to any such~~

1     (d) For an employee who is reappointed, the period of his or  
2     her absence shall be treated as a leave of absence and shall not be  
3     considered as a break in the continuity of his or her service, he or  
4     she shall retain the classification and order of employment he or  
5     she had when his or her services were terminated, and credit for  
6     prior service under any state or district retirement system shall not  
7     be affected by ~~such~~ the termination, but the period of his or her  
8     absence shall not count as a part of the service required for  
9     retirement.

10    ~~(5)~~  
11    (e) During the period of his or her preferred right to  
12    reappointment, ~~any such an employee shall~~, in the order of original  
13    employment, ~~shall~~ be offered prior opportunity for substitute  
14    service during the absence of any other employee who has been  
15    granted a leave of absence or who is temporarily absent from duty;  
16    ~~provided, that. However,~~ his or her services may be terminated  
17    upon the return to duty of ~~said the~~ other employee and ~~that said~~  
18    the substitute service shall not affect the retention of his or her  
19    previous classification and rights. ~~If, in any school year the~~  
20    ~~employee serves as a substitute in any position requiring~~  
21    ~~certification for any 21 days or more within a period of 60~~  
22    ~~school days, the compensation the employee receives for substitute~~  
23    ~~service in that 60-day period, including his or her first 20 days of~~  
24    ~~substitute service, shall be not less than the amount the employee~~  
25    ~~would receive if he or she were being reappointed.~~

26    (f) Notwithstanding subdivision (e), a school district may deviate  
27    from the order of seniority in reappointing a certificated employee  
28    for either of the following reasons:

29    (1) The district demonstrates a specific need for personnel to  
30    teach a specific course or course of study, or to provide services  
31    authorized by a services credential with a specialization in either  
32    pupil personnel services or health for a school nurse, and the  
33    employee has special training and experience, and has  
34    demonstrated the competency necessary to teach in a specified  
35    grade level or course of study, or to provide those services, which  
36    others with more seniority do not possess or are not able to  
37    provide.

38    (2) For purposes of maintaining or achieving compliance with  
39    constitutional requirements related to equal protection of the laws.

40    ~~(6)~~

(g) During the period of the employee's preferred right to reappointment, the governing board of the district, if it is also the governing board of one or more other districts, may assign him *or her* to service, which he *or she* is certificated and competent to render, in ~~said the~~ other district or districts; ~~provided, that the compensation be.~~ However, the compensation the employee receives ~~therefor~~ may in the discretion of the governing board be the same as he *or she* would have received had he *or she* been serving in the district from which his *or her* services were terminated, ~~that and~~ his *or her* service in the ~~said~~ other district or districts shall be counted toward the period required for both state and local retirement, as defined by Section 22102, as though rendered in the district from which his *or her* services were terminated, and that ~~no~~ a permanent employee in ~~said the~~ other district or districts shall *not* be displaced by him *or her*.

It is the intent of this subsection that the employees of a school district, the governing board of which is also the governing board of one or more other school districts, shall not be at a disadvantage as compared with employees of a unified school district.

~~(7)~~

(h) At any time prior to the completion of one year after his *or her* return to service, he *or she* may continue or make up, with interest, his *or her* own contributions to ~~any~~ a state or district retirement system, for the period of his *or her* absence, but it shall not be obligatory on *the* state or district to match ~~such the~~ contributions.

~~(8) Should he or she become~~

(i) ~~If the employee becomes~~ disabled or ~~reach~~ reaches retirement age at any time before his *or her* return to service, he *or she* shall receive, in any state or district retirement system of which he *or she* was a member, all benefits to which he *or she* would have been entitled ~~had such event~~ if the disability or retirement occurred at the time of his *or her* termination of service, plus any benefits he *or she* may have qualified for thereafter, as though still employed.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

1 *In order to make the necessary statutory changes to implement*  
2 *the Budget Act of 2010 at the earliest time possible, it is necessary*  
3 *that this act take effect immediately.*

4 SECTION 1. ~~Section 17210 of the Education Code is amended~~  
5 ~~to read:~~

6 ~~17210. As used in this article, the following terms have the~~  
7 ~~following meanings:~~

8 ~~(a) “Administering agency” means any agency designated~~  
9 ~~pursuant to Section 25502 of the Health and Safety Code.~~

10 ~~(b) “Environmental assessor” means a class II environmental~~  
11 ~~assessor registered by the Office of Environmental Health Hazard~~  
12 ~~Assessment pursuant to Chapter 6.98 (commencing with Section~~  
13 ~~25570) of Division 20 of the Health and Safety Code, a professional~~  
14 ~~engineer registered in this state, a geologist registered in this state,~~  
15 ~~a certified engineering geologist registered in this state, or a~~  
16 ~~licensed hazardous substance contractor certified pursuant to~~  
17 ~~Chapter 9 (commencing with Section 7000) of Division 3 of the~~  
18 ~~Business and Professions Code. A licensed hazardous substance~~  
19 ~~contractor shall hold the equivalent of a degree from an accredited~~  
20 ~~public or private college or university or from a private~~  
21 ~~postsecondary educational institution approved by the Bureau for~~  
22 ~~Private Postsecondary and Vocational Education with at least 60~~  
23 ~~units in environmental, biological, chemical, physical, or soil~~  
24 ~~science; engineering; geology; environmental or public health; or~~  
25 ~~a directly related science field. In addition, a person who conducts~~  
26 ~~phase I environmental assessments shall have at least two years’~~  
27 ~~experience in the preparation of those assessments and a person~~  
28 ~~who conducts a preliminary endangerment assessment shall have~~  
29 ~~at least three years’ experience in conducting those assessments.~~

30 ~~(c) “Handle” has the meaning the term is given in Article 1~~  
31 ~~(commencing with Section 25500) of Chapter 6.95 of Division 20~~  
32 ~~of the Health and Safety Code.~~

33 ~~(d) “Hazardous air emissions” means emissions into the ambient~~  
34 ~~air of air contaminants that have been identified as a toxic air~~  
35 ~~contaminant by the State Air Resources Board or by the air~~  
36 ~~pollution control officer for the jurisdiction in which the project~~  
37 ~~is located. As determined by the air pollution control officer,~~  
38 ~~hazardous air emissions also means emissions into the ambient air~~  
39 ~~from any substance identified in subdivisions (a) to (f), inclusive,~~  
40 ~~of Section 44321 of the Health and Safety Code.~~

1 (e) “Hazardous material” has the meaning the term is given in  
2 subdivision (d) of Section 25260 of the Health and Safety Code.

3 (f) “Operation and maintenance,” “removal action work plan,”  
4 “respond,” “response,” “response action,” and “site” have the  
5 meanings those terms are given in Article 2 (commencing with  
6 Section 25310) of Chapter 6.8 of Division 20 of the Health and  
7 Safety Code.

8 (g) “Phase I environmental assessment” means a preliminary  
9 assessment of a property to determine whether there has been or  
10 may have been a release of a hazardous material, or whether a  
11 naturally occurring hazardous material is present, based on  
12 reasonably available information about the property and the area  
13 in its vicinity. A phase I environmental assessment may include,  
14 but is not limited to, a review of public and private records of  
15 current and historical land uses, prior releases of a hazardous  
16 material, data base searches, review of relevant files of federal,  
17 state, and local agencies, visual and other surveys of the property,  
18 review of historical aerial photographs of the property and the area  
19 in its vicinity, interviews with current and previous owners and  
20 operators, and review of regulatory correspondence and  
21 environmental reports. Sampling or testing is not required as part  
22 of the phase I environmental assessment. A phase I environmental  
23 assessment conducted pursuant to the requirements adopted by the  
24 American Society for Testing and Materials for due diligence for  
25 commercial real estate transactions and that includes a review of  
26 all reasonably available records and data bases regarding current  
27 and prior gas or oil wells and naturally occurring hazardous  
28 materials located on the site or located where they could potentially  
29 effect the site, satisfies the requirements of this article for  
30 conducting a phase I environmental assessment unless and until  
31 the Department of Toxic Substances Control adopts final  
32 regulations that establish guidelines for a phase I environmental  
33 assessment for purposes of schoolsites that impose different  
34 requirements from those imposed by the American Society for  
35 Testing and Materials.

36 (h) “Preliminary endangerment assessment” means an activity  
37 that is performed to determine whether current or past hazardous  
38 material management practices or waste management practices  
39 have resulted in a release or threatened release of hazardous  
40 materials, or whether naturally occurring hazardous materials are

1 present, which pose a threat to the health of children, the learning  
2 abilities of children, public health, or the environment. A  
3 preliminary endangerment assessment requires sampling and  
4 analysis of a site, a preliminary determination of the type and extent  
5 of hazardous material contamination of the site, and a preliminary  
6 evaluation of the risks that the hazardous material contamination  
7 of a site may pose to the health of children, public health, or the  
8 environment, and shall be conducted in a manner that complies  
9 with the guidelines published by the Department of Toxic  
10 Substances Control entitled “Preliminary Endangerment  
11 Assessment: Guidance Manual,” including any amendments that  
12 are determined by the Department of Toxic Substances Control to  
13 be appropriate to address issues that are unique to schoolsites.

14 (i) “Proposed schoolsite” means real property acquired or to be  
15 acquired or proposed for use as a schoolsite, prior to its occupancy  
16 as a school.

17 (j) “Regulated substance” means any material defined in  
18 subdivision (g) of Section 25532 of the Health and Safety Code.

19 (k) “Release” has the same meaning the term is given in Article  
20 2 (commencing with Section 25310) of Chapter 6.8 of Division  
21 20 of the Health and Safety Code, and includes a release described  
22 in subdivision (d) of Section 25321 of the Health and Safety Code.

23 (l) “Remedial action plan” means a plan approved by the  
24 Department of Toxic Substances Control pursuant to Section  
25 25356.1 of the Health and Safety Code.

26 (m) “State act” means the Carpenter-Presley-Tanner Hazardous  
27 Substance Account Act (Chapter 6.8 (commencing with Section  
28 25300) of Division 20 of the Health and Safety Code).